

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

R.K., *et al.*,)
Plaintiffs,)
v.)
GOVERNOR BILL LEE, *et al.*,)
Defendants.)

No. 3:21-cv-00853
Chief Judge Crenshaw
Magistrate Judge Frensley

DEFENDANTS' MOTION TO EXCLUDE

Defendants Bill Lee, in his official capacity as the Governor of Tennessee, and Penny Schwinn, in her official capacity as the Commissioner of the Tennessee Department of Education, respectfully move the Court to exclude any argument or evidence relating to Plaintiffs' previously undisclosed argument that they are seeking quarantining as a reasonable accommodation in support of their application for a preliminary injunction. For the reasons stated in the accompanying memorandum, Plaintiffs' disclosure of this new theory of the case less than twenty-four hours before the preliminary injunction hearing violates Rule 65's notice requirement.

Respectfully submitted,

HERBERT H. SLATERY III
ATTORNEY GENERAL AND REPORTER

/s/ Reed N. Smith

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CERTIFICATE OF CONFERENCE

On November 18, 2021, the undersigned counsel attempted to confer with Plaintiffs' counsel, Mr. Justin Gilbert, by telephone and by text message. The undersigned received no response from Mr. Gilbert. The undersigned then notified all counsel of record by email that Defendants intend to file this motion and the nature of relief sought and requested conference to discuss the relief sought herein. Having received no response from Plaintiffs' counsel, Defendants presume opposition to the relief sought herein.

s/ Reed N. Smith
Reed Smith, VA Bar No. 77334
Acting Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that on November 19, 2021, a copy of the foregoing document was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties as indicated below. Parties may access this filing through the Court's electronic filing system.

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